

United States
Circuit Court of Appeals
For the Ninth Circuit.

H. O. HARRISON COMPANY, a Corporation,
Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED

AUG 14 1923

F. D. MONOKTON.

CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

H. O. HARRISON COMPANY, a Corporation,
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names of Attorneys of Record.

For Howard Automobile Co.,

(Claimant and appellant)

REDMAN & ALEXANDER, San Francisco.

For the United States, appellee:

UNITED STATES ATTORNEY, S. F.

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant,

and

H. O. HARRISON CO., a Corporation,

Applicant.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare copies of the following documents and papers in the above cause and forward them under your certificate and seal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, as a transcript of record in said cause.

Information; order for sale of automobile; application for allowance of lien; notice of hearing application for allowance of lien; order and opinion denying application for allowance of lien; petition for writ of error; bond on writ of error; assignment of error; writ of error; bill of exceptions; citation on writ of error; praecipe for appellate record; clerk's certificate on printing of record.

W. C. BACON,

REDMAN & ALEXANDER,

Attorneys for Plaintiff in Error.

[Endorsed]: Filed Jul. 6, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[1*]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 12,957.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

Information.

At the November term of said court in the year
of our Lord one thousand nine hundred and
twenty-two

*Page-number appearing at foot of page of original certified Transcript of Record.

BE IT REMEMBERED that John T. Williams, United States Attorney for the Northern District of California, by and through Kenneth M. Green, Special Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into court on this the 14th day of February, 1923, and with leave of the said Court first having been had and obtained, gives the Court to understand and be informed as follows to wit:

That the allegations hereinafter set forth each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:
THAT

JACK MODESTI

hereinafter called the defendant, heretofore, to wit, on or about [2] 14th day of December, 1922, at ——— in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court did then and there transport certain intoxicating liquor, to wit, 2 5-gal. bottles of what is called jackass brandy then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the transporting of the said intoxicating liquor by the said defendant was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided. [3]

SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW THEREFORE, your informant presents:
THAT

JACK MODESTI

hereinafter called the defendant, heretofore, to wit, on or about the 14th day of December, 1922, at ——— in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there being, did then and there wilfully and unlawfully possess certain intoxicating liquor, to wit: 2 5-gal. bottles of what is called jackass brandy then and there containing one-half of one per cent or more of alcohol by volume which

was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the National *Prohibition against* the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,

United States Attorney.

KENNETH M. GREEN,

Special Assistant U. S. Attorney. [4]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

George Neary being first duly sworn deposes and says: That Jack Modesti on or about the 14th day of December, 1922, at city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there on the premises *aforesaid* certain intoxicating liquor, to wit: 2 5-gal. bottles of what is called jackass brandy then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the transporting of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful

and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act,"

And affiant on his oath aforesaid further deposes and says: THAT

JACK MODESTI

on or about the 14th day of December, 1922, at city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there possess certain intoxicating liquor, to wit, 2 5-gal. bottles of what is called jackass brandy then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendant was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

GEORGE NEARY.

Subscribed and sworn to before me this 13th day of February, 1923.

[Seal]

C. M. TAYLOR,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Feb. 15, 1923. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.
[5]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 12,957.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

Order of Sale of Property Seized.

It appearing to the satisfaction of the Court that the above-entitled defendant was on the 17th day of March, 1923, convicted of illegally transporting intoxicating liquor in a certain automobile hereinafter described, which said automobile was, at the time of the arrest of said defendant, seized by and still is in the possession of the Federal Prohibition Director for the State of California, and no good cause to the contrary being shown by the owner of said automobile;

IT IS HEREBY ORDERED that said automobile, to wit, an Essex Touring Car, License No. 604483, be sold at public auction by the United States Marshal for the Northern District of California, at the United States Post Office Building, 7th and Stevenson Streets, city and county of San Francisco;

IT IS FURTHER ORDERED THAT the said marshal, after deducting the expenses of keeping the said automobile, fee for the seizure and the

cost of the sale, shall pay all liens, according to their priorities, which are established as being *bona fide* and as having been created without the lienor having any notice that the said automobile was being used or was to be used for the illegal transportation of liquor at the time of the seizure thereof, and shall pay the balance of the proceeds into the [6] Treasury of the United States as miscellaneous receipts.

R. S. BEAN,

United States District Judge.

Dated: March 22, 1923.

[Endorsed]: Filed Mar. 22, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [7]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

Application for Allowance of Lien Upon Seized Property.

Comes now H. O. Harrison Co. and in support of this application for a lien against the Essex automobile seized by the United States Govern-

ment in connection with the arrest of the above-named defendant or against the proceeds of the sale of said automobile, alleges as follows:

1. That applicant is and at all times mentioned herein was a corporation organized and existing under and by virtue of the laws of the State of California and engaged therein in the business of selling automobiles.

2. That on or about the 14th day of April, 1922, applicant sold an Essex touring automobile, 1922 model, Factory No. 611287, Motor No. 71226 to Jack Modesti, defendant above named, under a conditional sales contract under the terms of which title was retained by applicant until the purchase price was fully paid. That before the completion of the payments by said Modesti provided in said contract and while said contract was in full force and effect and on or about the 14th day of December, 1922, said Modesti was arrested charged with the transportation of intoxicating liquor in violation of the Federal Prohibition Act and said automobile was seized by duly authorized agents of the United States Government. That on or about the 17th day of March, 1923, said defendant Modesti was [8] convicted and fined in the above-entitled court and action.

3. That the unpaid balance due and to become due under said contract from said Modesti to applicant at the time of said seizure is the sum of One Hundred Ninety-eight and 06/100 (\$198.06) Dollars and accrued interest at the rate of 8%

from April 14, 1922, the date upon which said payments became due.

4. That applicant had no knowledge or reason to believe that said automobile would be used for transportation purposes in violation of the Federal Prohibition Act and that applicant had no notice that said vehicle was being used or was to be used for illegal transportation of liquor or for any purpose in violation of law.

WHEREFORE, applicant prays for the allowance of a lien in its favor in the sum of One Hundred Ninety-eight and 06/100 (\$198.06) Dollars and accruing interest at the rate of 8% from April 14th, 1922, against the said Essex touring automobile herein described or against the proceeds of the sale of said automobile pursuant to the statute in such cases made and provided.

H. O. HARRISON CO.

By REDMAN & ALEXANDER,
Attorneys for Applicant. [9]

United States of America,
State of California,
City and County of San Francisco,—ss.

A. L. King, being first duly sworn deposes and says: That he is the auditor of H. O. Harrison Co., the applicant named in the foregoing application, and is authorized to verify said application; that he has read said application and knows the contents thereof; that the *said* is true of his own knowledge except as to the matters therein

stated on information and belief and that as to those matters he believes it to be true.

A. L. KING.

Subscribed and sworn to before me this 28th day of March, 1923.

[Seal]

OLIVE DIBBLE,

Notary Public in and for the City and County of
San Francisco, State of California.

Service of the within application for lien admitted this 29th day of March, 1923.

JOHN T. WILLIAMS,

E. L.

Attorney for United States.

[Endorsed]: Filed Mar. 29, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [10]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

**Notice of Hearing of Application for Allowance
of Lien.**

To the UNITED STATES DISTRICT ATTORNEY, the SPECIAL ASSISTANT to the UNITED STATES DISTRICT ATTORNEY, and to the UNITED STATES MARSHAL:

You will please take notice that the application of H. O. Harrison Co. for the allowance of a lien in its favor upon the Essex touring car seized and ordered sold in the above-entitled proceedings will be placed upon the calendar for hearing in the above-entitled court on Monday, April 2d, 1923, at ten o'clock A. M. or as soon thereafter as the matter can be heard.

Dated March 29th, 1923.

REDMAN & ALEXANDER,

Attorneys for Applicant.

Service of the within notice admitted this 29th day of March, 1923.

JOHN T. WILLIAMS,

E. L.

Attorney for U. S.

[Endorsed]: Filed Mar. 29, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [11]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 12,871.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL BELLI,

Defendant.

No. 12,188.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUISEPPE CAPACIOLI,

Defendant.

No. 12,296.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. O. KILDALL, et al.,

Defendants.

No. 12,957.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

Order Denying Motion. .

PARTRIDGE, JOHN S.— [12] In each of the above-entitled causes the defendants duly pleaded guilty and were punished for the illegal transportation of liquors contrary to the provisions of the National Prohibition Statute. In each case the liquor was found in an automobile and the automobile was seized and confiscated by the Government. The defendant in each case was in possession of the automobile by virtue of a contract of sale by which the title to the automobile was retained by the vendor, said title not to pass to the defendant until the payment of certain specified sums of money. All of these contracts were in the form of conditional sales, long recognized under the law of California.

In the first three causes the matters are before the Court on petitions for return of the automobile by the vendor. In the last cause, however, the vendor does not ask for the return of the automobile, but applies for an order establishing a lien upon the proceeds of the sale, to the extent of the balance of the unpaid purchase price.

Section 26 of the National Prohibition law provides: "Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer, he shall take possession of the vehicle and team, or automobile . . . and shall arrest any person in charge thereof. The Courts upon conviction of the person so arrested, shall order the liquor destroyed and, unless good cause to the con-

trary is shown by the owner, shall order a sale, by public auction of the property seized, and the officer making the sale . . . shall pay all liens according to the priority which are established as being *bona fide* and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of the liquor." [13]

It is not by any means easy to reconcile the decisions upon Section 26 of the Act. Judge Thomas, District Judge of the District of Connecticut in *United States vs. Silvester*, 273 Fed. 253, allowed a lien for the amount of the unpaid purchase price under what the opinion calls "a conditional bill of sale," although he denied the return of the automobile. The opinion seems to treat the unpaid purchase price as a lien upon the property. He denied the petition for the return of the automobile, however, upon the theory that that would permit "a lienor or mortgagor to profit by the transaction and that result was never intended by the framers of the law."

Quite recently Judge Dooling of this District, sitting in the District of Arizona, in the *United States vs. Marshal Montgomery, et al.*, held distinctly and emphatically that the vendor under a conditional bill of sale has no lien upon the automobile. He gives this as his reason: "It is not unreasonable to suppose Congress had in mind the fact that an owner may determine who shall have the use of the vehicle and thus, in a measure, control

such use, while a lienor may not, because he is at no time entitled to its possession."

It seems to me that this is clearly the proper rule to apply in a case arising under a contract of conditional sale made and to be performed in the State of California. It is perfectly well settled in this state that under one of these conditional contracts for the sale of personal property, the title remains in the vendor and if the property is destroyed, the loss falls upon him. *Potts Company vs. Benedict*, 156 Cal. 322; *Waltz vs. Silveria*, 25 Cal. App. 717. It is equally well settled that the vendor has his option of either of two remedies upon the failure of the vendee to pay the balance of the purchase price; [14]

First, he can take back the property because the title is still in him;

Second, he can waive his right, treat the sale as absolute, and sue for the balance; but he cannot do both. *Park & Lacey Company vs. White River Lumber Company*, 101 Cal. 37; *Holt Manufacturing Company vs. Ewing*, 109 Cal. 353; *Waltz vs. Silveria*, *supra*; *Muncy vs. Brain*, 158 Cal. 300; *Adams vs. Anthony*, 178 Cal. 158.

Reference was made on the argument and the submission of authorities to the recent case of *McDowell vs. United States*, No. 3865, decided by the Circuit Court of Appeals for this Circuit on February 5th. In that case, however, the real question involved was whether Section 3450 of the Revised Statutes had been repealed by the provisions of the National Prohibition Act. It

was clearly recognized that under Section 3450, the conveyance in which goods were moved in an attempt to defraud the United States of a tax was absolutely forfeited, whether or not the person so conveying the goods was the actual owner of the vehicle or not. In that case the Court says that this provision of the Revised Statutes was in effect repealed by Section 26 of the National Prohibition Act. It is therefore apparent that unless language is found in Section 26 which would relieve the vendor under a conditional bill of sale from the provision of forfeiture and sale, that those latter provisions would authorize the Government to seize and sell the conveying vehicle. As Judge Dooling points out in his decision, no such language is found.

It is clear to me, therefore, that at least in California, the following conclusions are inevitable. [15]

1. The vendor under a conditional bill of sale retaining title to the property in himself cannot compel the return of the property by the Government;

2. Such a vendor has no lien upon such a vehicle for the very simple reason that he is the owner thereof.

The motions, therefore, in each case will be denied.

Dated: April 14, 1923.

[Endorsed]: Filed Apr. 14, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[16]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant,

and

H. O. HARRISON CO., a Corporation,

Applicant.

Petition for Writ of Error.

To the Honorable JOHN S. PARTRIDGE, Judge
of the United States District Court:

The above-named applicant feeling aggrieved
by the order made and entered in the above-en-
titled cause on the 14th day of April, A. D. 1923,
does hereby apply for a writ of error from said or-
der to the Circuit Court of Appeals for the Ninth
Circuit, for the reason set forth in the assignment
of errors filed herewith, and it prays that a writ of
error be allowed and that citation be issued as pro-
vided by law and that a transcript of the record,
proceedings and document upon which said decree
was based, duly authenticated, be sent to the
United States Circuit Court of Appeals for the
Ninth Circuit under the rules of court in such cases
made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

H. O. HARRISON CO.,

Petitioner.

By REDMAN & ALEXANDER,

Attorneys for Petitioner. [17]

Writ of error allowed upon giving bond as required by law for the sum of \$500.00.

JOHN S. PARTRIDGE,

Judge of the United States District Court.

Service of the within petition for writ of error admitted this 3d day of May, 1923.

J. T. WILLIAMS, U. S. Attorney,

Attorney for Plaintiff, United States of America.

[Endorsed]: Filed May 3, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [18]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant,

and

H. O. HARRISON CO., a Corporation,

Applicant.

Assignment of Errors.

Now comes the applicant in the above-entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the writ of error in the above-entitled cause from the decree made by this Honorable Court on the 14th day of April, 1923.

I.

That the United States District Court for the Northern District of California erred in denying the application for allowance of a lien filed by the applicant in the above cause.

II.

That the United States District Court for the Northern District of California erred in refusing to grant the application of the applicant for the allowance of a lien in its favor upon the Essex automobile ordered sold in the above-entitled cause, for the reason that said applicant had a valid and existing claim against said automobile and that it had no way of securing payment of said claim except by taking said [19] automobile.

WHEREFORE, applicant prays that said order be reversed and that an order be entered reversing the decision of the lower court in said cause and allowing a lien in favor of applicant as prayed in its application.

REDMAN & ALEXANDER,
Attorneys for Applicant.

Service of the within assignment of errors admitted this 3d day of May, 1923.

J. T. WILLIAMS, U. S. Atty.,

Attorney for Pltff. United States of America.

[Endorsed]: Filed May 3, 1923. Walter B. Mal-
ing, Clerk. By C. W. Calbreath, Deputy Clerk.
[20]

The premium charged for this bond is 10.00
Dollars per annum.

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant,

and

H. O. HARRISON CO., a Corporation,

Applicant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
that we, the H. O. Harrison Co., a corporation, as
principal, and The Aetna Casualty and Surety
Company, as surety, are held and firmly bound
unto the plaintiff, the United States of America,
in the above-entitled action in the full and just

sum of Five Hundred Dollars (\$500.00), to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our, and each of our, successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 8th day of May, A. D. 1923.

WHEREAS, lately at a District Court of the United States for the Northern District of California in a proceeding pending in said court, entitled as above, an order and judgment was rendered against said applicant H. O. Harrison Co., a corporation, and the said applicant has sued out a writ of error in the United States Circuit Court of Appeals in and for the Ninth Circuit to reverse the said order and judgment; [21]

NOW, THEREFORE, the condition of this obligation is such, that if the said H. O. Harrison Co., a corporation, shall prosecute such writ of error to effect, and answer the damages and costs if it shall fail to make its plea good, then the above application to be void; otherwise, to remain in full force and virtue.

[Seal]

H. O. HARRISON CO.

By A. S. KING,

Its Secretary.

THE AETNA CASUALTY AND
SURETY COMPANY.

By H. C. WOOD,

Resident Vice-President.

Attest:

[Seal]

P. M. CHRISTIANSON,

Resident Assistant Secretary.

Approved this 18th day of May, 1923.

JOHN S. PARTRIDGE,

District Judge.

[Endorsed]: Filed May 18, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[22]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant,

and

H. O. HARRISON CO., a Corporation,

Applicant.

Bill of Exceptions.

BE IT REMEMBERED that on February 15, 1923, the plaintiff by John T. Williams, United States Attorney for the Northern District of California by leave of Court filed a verified information in two counts against one Jack Modesti, and that the following is a true copy of said information and of the affidavit in support thereof:

“In the Southern Division of the United States District Court, for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

INFORMATION.

At the November term of said Court in the year of our Lord one thousand nine hundred and twenty-two;

BE IT REMEMBERED that John T. Williams, United States Attorney for the Northern District of California, by and through Kenneth M. Green, Special Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into Court on this, the 14th day of February, 1922, and with leave of the said Court first having been had and obtained, gives the Court to understand and be informed as follows, to wit: [23]

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents: That Jack Modesti hereinafter called the defendant, heretofore, to wit, on or about the 14th day of December, 1922, in the City and County of San Francisco, in the Southern Division of the Northern District of California and within the jurisdiction of this Court, then and there being, did then and there transport certain intoxicating liquor, to wit: 2 5-gal. bottles of what is called jackass brandy, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the transporting of said intoxicating liquor by the said defendant at the time and place aforesaid, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents: That Jack Modesti, hereinafter called the defendant, heretofore, to wit, on or about the 14th day of December, 1922, in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully possess certain intoxicating liquor to wit: 2 5-gal. bottles of what is called jackass brandy, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST THE PEACE AND dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,

United States Attorney.

KENNETH M. GREEN,

Special Assistant United States Attorney. [24]

United States of America,

Northern District of California,

City and County of San Francisco,—ss.

George Neavy being first duly sworn deposes and says: That Jack Modesti on or about the 14th

day of December, 1922, at City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and *there on* the premises aforesaid certain intoxicating liquor, to wit: 2 5-gal. bottles of what is called jackass brandy, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the transporting of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

And affiant on his oath aforesaid further deposes and says: That Jack Modesti on or about the 14th day of December, 1922, at City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there possess certain intoxicating liquor, to wit, 2 5-gal. bottles of what is called jackass brandy then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for beverage purposes.

That the possession of the said intoxicating liquor by the said defendant was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

GEORGE NEAVY.

Subscribed and sworn to before me this 13 day of February, 1923.

[Seal]

C. M. TAYLOR,
Deputy Clerk, U. S. District Court, Northern District of California.

Filed: Feb. 15, 1923. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk."

That on March 17, 1923, the said defendant Jack Modesti upon being arraigned on the said information pleaded guilty to both counts thereof; that thereupon the Court upon the said plea of guilty sentenced the said defendant Jack Modesti to pay a fine of \$400.00, and provided that in the event the said fine was not paid he be imprisoned in the County Jail of the City and County of San Francisco for a period of four months; that on March 21, 1923, in the said proceeding the said Court duly made and entered its order for the sale of one certain Essex touring car; that a true copy of the said order is as follows:

"In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 12,957.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant. [25]

ORDER OF SALE OF PROPERTY SEIZED.

It appearing to the satisfaction of the Court that the above-entitled defendant was on the 17th day of March, 1923, convicted of illegally transporting intoxicating liquor in a certain automobile hereinbefore described, which said automobile was, at the time of the arrest of said defendant, seized by and still is in the possession of the Federal Prohibition Director for the State of California, and no good cause to the contrary being shown by the owner of said automobile;

IT IS HEREBY ORDERED that said automobile, to wit, an Essex Touring Car, License No. 604,483, be sold at public auction by the United States Marshal for the Northern District of California, at the United States Post Office Building, 7th and Stevenson Streets, City and County of San Francisco;

IT IS FURTHER ORDERED that the said Marshal, after deducting the expenses of keeping the said automobile, fee for seizure and the cost of the sale, shall pay all liens, according to their priorities, which are established as being *bona fide* and as having been created without the lienor having any notice that the said automobile was being used or was to be used for the illegal transportation of liquor at the time of the seizure thereof, and shall pay the balance of the proceeds into

the Treasury of the United States as miscellaneous receipts.

R. S. BEAN,

United States District Judge.

Dated: March 22, 1923.

[Endorsed]: Filed Mar. 22, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk."

BE IT FURTHER REMEMBERED that on the 29th day of March, 1923, H. O. Harrison Co., applicant above named, filed in the above-entitled proceeding its verified application for the allowance of a lien in its favor upon the proceeds of the sale of the Essex automobile, which said Essex automobile was seized by the United States Government and ordered sold in the said proceeding, being in words and figures following, to wit:

"In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 12,957.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK MODESTI,

Defendant.

APPLICATION FOR ALLOWANCE OF LIEN
UPON SEIZED PROPERTY. [26]

Comes now H. O. Harrison Co. and in support of this application for a lien against the Essex automobile seized by the United States Government in connection with the arrest of the above-named defendant or against the proceeds of the sale of said automobile, alleges as follows:

1. That applicant is and at all times mentioned herein was a corporation organized and existing under and by virtue of the laws of the State of California and engaged therein in the business of selling automobiles.

2. That on or about the 14th day of April, 1922, applicant sold an Essex touring automobile, 1922 model, Factory No. 611287, Motor No. 71226, to Jack Modesti, defendant above named, under a conditional sales contract under the terms of which title was retained by applicant until the purchase price was fully paid. That before the completion of the payments by said Modesti provided in said contract and while said contract was in full force and effect and on or about the 14th day of December, 1922, said Modesti was arrested charged with the transportation of intoxicating liquor in violation of the Federal Prohibition Act and said automobile was seized by duly authorized agents of the United States Government. That on or about the 17th day of March, 1923, said defendant Modesti was convicted and fined in the above-entitled court and action.

3. That the unpaid balance due and to become due under said contract from said Modesti to applicant at the time of said seizure is the sum of One Hundred Ninety-eight and 06/100 (\$198.06) Dollars and accruing interest at the rate of 8% from April 14, 1922, the date upon which said payments became due.

4. That applicant had no knowledge or reason to believe that said automobile would be used for transportation purposes in violation of the Federal Prohibition Act and that applicant had no notice that said vehicle was being used or was to be used for illegal transportation of liquor or for any purpose in violation of law.

WHEREFORE, applicant prays for the allowance of a lien in its favor in the sum of One Hundred Ninety-eight and 06/100 (\$198.06) Dollars and accruing interest at the rate of 8% from April 14th, 1922, against the said Essex touring automobile herein described or against the proceeds of the sale of said automobile pursuant to the statute in such cases made and provided.

H. O. HARRISON CO.

By REDMAN & ALEXANDER,

Attorneys for Applicant.

United States of America,

State of California,

City and County of San Francisco,—ss.

A. L. King, being first duly sworn, deposes and says: That he is the auditor of the H. O. Harrison Co., the applicant named in the foregoing ap-

plication and is authorized to verify said application; that he has read said application and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief and that as to those matters he believes it to be true.

A. L. KING. [27]

Subscribed and sworn to before me this 28 day of March, 1923.

[Seal]

OLIVER DIBBLE,

Notary Public in and for the City and County of San Francisco, State of California.

BE IT FURTHER REMEMBERED that said application came on regularly to be heard on the 3d day of April, 1923, before the Court without a jury, a jury having been waived by the parties, Kenneth M. Green, Esq., Special Assistant United States Attorney, appearing for the plaintiff, the United States of America, and Messrs. Redman & Alexander, appearing for applicant, H. O. Harrison Co., the Honorable John S. Partridge, United States District Judge for the Northern District of California, presiding;

Whereupon the following proceedings were had and evidence introduced, to wit: the record of the previous proceeding in the said cause including the papers and documents hereinabove set forth were seen, examined and understood by the Court and thereupon the conditional contract of sale referred to in the application of H. O. Harrison Co., was offered and received in evidence being in words and figures following, to wit: [28]

Conditional Contract of Sale

This Conditional Contract of Sale, made by and between **H. O. Harrison Co.**,
party of the first part, and **Jack Modesti**, party of the second part,

WITNESSETH: That the party of the first part hereby agrees to sell and the party of the second part to buy the following described automobile upon the terms and conditions hereinafter set forth:

MODEL YEAR	TRADE NAME	TYPE OF BODY (IF TRUCK STATE TONNAGE)	MOTOR NUMBER	SERIAL NUMBER	STATE LICENSE NUMBER	NEW OR USED	NUMBER OF CYLINDERS
	Essex	Touring	71226	611287		New	4

And pay therefor in Gold Coin of the United States the total purchase price of **\$1510.20** as follows:
\$ 850.00 upon the signing of this contract, receipt of which is hereby acknowledged, and the balance of
\$ 660.20 as follows:

\$ 66.02	on Jan. 14 1923	\$ 66.02	on May 14 1922	\$ 66.02	on Sept. 14 1922
\$ 66.02	on Feb. 14 1923	\$ 66.02	on June 14 1922	\$ 66.02	on Oct. 14 1922
\$	on Mar. 19	\$ 66.02	on July 14 1922	\$ 66.02	on Nov. 14 1922
\$	on Apr. 19	\$ 66.02	on Aug. 14 1922	\$ 66.02	on Dec. 14 1922

and **Dollars** on the _____ day of each month thereafter
for _____ months, and such other sums as are hereinafter mentioned, together with interest on all
amounts unpaid at the rate of **8** per cent per annum from **date** until paid. All of said
payments shall be payable at the office of the party of the first part.

1. The party of the second part hereby acknowledges receipt of said automobile, and agrees not to sell, attempt to sell or otherwise dispose of or hypothecate the said automobile nor take the same out of the State of California, nor permit the same to be removed from the possession of the party of the second part, nor permit the same to be attached or replevined, nor create nor permit to be created any lien or incumbrance against the same for storage, repairs or otherwise, and further agrees to keep said automobile in good repair, and to pay all taxes and assessments levied or assessed against said automobile including any taxes or assessments levied or assessed upon this contract, and also fees for acknowledging and recording this contract, and not to assign this contract without the previous written consent of the party of the first part; and said party of the second part hereby further agrees that the said party of the first part may take possession of said automobile for the purpose of putting the same in repair in case said party of the second part fails to keep it in good repair, but the taking possession thereof for such purpose shall not operate as an election by the party of the first part to terminate this contract, and all bills for repairs done upon and material furnished for said automobile by said party of the first part shall be added to the purchase price of said automobile and shall be payable to said party of the first part on the 10th day of the next succeeding month, and it is agreed that said party of the second part acquires no right or title in or to said automobile until all such bills have been paid by said party of the second part, and said party of the second part has fully complied with all other terms of this contract.

2. The party of the second part shall keep said automobile insured in a Company selected by said party of the first part, and in favor of the party of the first part, against fire, theft, windfall, conversion, condemnation and

for an amount not less than the unpaid balance due on this contract. Said party of the second part shall also pay for the premium for said insurance at the time of the execution of this contract, and also to continue said insurance in force during the life of this contract at his expense. In case of loss under said policy the money paid by the insurance company shall be retained by the party of the first part or his assigns, in settlement of said loss, to the extent of the unpaid balance under this contract, and the remainder, if any, paid to the party of the second part. Said party of the second part agrees to save said party of the first part harmless from any and all alleged liabilities, including all costs and Attorney's fees, for all injury or damage to persons or property caused in any manner by the maintenance, operation or use of said automobile.

3. Should any loss, damage or injury result to the said automobile from any cause whatever, such loss, damage or injury shall not relieve the party of the second part of his obligation to pay the full balance due according to the terms of this contract, and in case of any unusual or unreasonable depreciation in the value of said automobile, of which the party of the first part shall be the sole judge, said party of the first part may, at his option, retake possession of said automobile, including all equipment and accessories, with or without process of law, and cause said automobile to be sold either at public auction or private sale without notice and credit said party of the second part with the proceeds realized from said sale after deducting the necessary cost of retaking said automobile, together with the cost of the necessary repairs to put said automobile in condition to be sold, and also the costs of said sale, including reasonable commission for making said sale and also reasonable Attorney fees, and shall also credit said party of the second part with all amounts theretofore paid by him under the terms of this agreement, whereupon said party of the second part shall immediately become liable for the balance of the total contract price, hereinafter stated, remaining unpaid, which said balance shall be computed by deducting the total amount of said credits from the said total contract price agreed upon herein, and the said party of the first part may bring suit for said balance immediately after ascertaining same.

4. Should the party of the second part make default in the payment of any of the said several amounts when due, or in the event of failure of the party of the second part to perform any of the conditions and covenants herein contained, or in the event that the party of the second part shall become financially involved or insolvent, or in the event that the party of the second part shall fail to pay the cost of said insurance on demand, all payments herein provided for shall be due and payable at once, or the party of the first part may immediately take possession of said automobile whenever and wherever found, with or without process of law, using all necessary force to do so, and all payments previously made by the party of the second part shall be construed to be applied as compensation for depreciation in value and for the use of said automobile; and the party of the second part hereby waives and relinquishes all rights to the moneys so paid and all rights against the party of the first part, for taking possession of said automobile.

5. The title to the said automobile herein described, including parts, accessories and extra equipment, now or hereafter attached to or used in connection with said automobile shall remain solely in the party of the first part until all of the said payments are made and all of the conditions herein contained are fully complied with. Possession of said automobile shall give the party of the second part no title or interest therein and no rights except as herein provided.

6. As a part of this conditional contract of sale, it is further agreed that in the event the party of the first part shall assign this contract and the moneys payable thereunder to a third party, then all moneys payable under this contract by the party of the second part shall be paid to such assignee without recoupment, set-off or counter-claim of any sort whatsoever.

7. In case the party of the first part shall employ an Attorney to recover either the automobile or collect any unpaid balance due under this contract, the party of the second part promises to pay, and there shall immediately become due and payable, an additional sum of not less than \$100.00 as and for Attorney's fees. The party of the second part further agrees to pay to the party of the first part any expense which the party of the first part may incur in recovering the possession of the said automobile, or collecting any balance due under this contract in the event that the party of the second part fails to perform any of the promises or covenants to be performed by the party of the second part.

8. Said party of the second part hereby expressly agrees that he will not use or permit said automobile to be used for hire during the existence of this contract, without the written consent of the party of the first part.

9. It is further agreed that the party of the second part will notify the party of the first part of any change of his address.

10. The party of the second part agrees forthwith to properly register said automobile and procure a license therefor from the Motor Vehicle Department of the State of California, and to immediately report the number, in writing, to the party of the first part, or its assigns, who shall have the right to insert the State License number in the blank above provided therefor.

11. Time to expressly made of the essence of this contract.

12. It is mutually understood and agreed that should the party of the first part tender to the party of the second part any statement, or any notice or notices of any amount due under this contract, or should the party of the first part or its assigns accept from the party of the second part, part payments or payments of any amount or amounts past due under this agreement, then neither the rendering of such statements nor the acceptance of part payment of the amount past due shall be construed in any way to be a waiver or change or modification on the part of the party of the first part of any of the terms or conditions of this contract or of any rights of forfeiture or cancellation of said contract in case of default in the part of the party of the second part.

13. Said party of the second part further agrees that in the event of compulsory or voluntary military duty, that he waives all rights to any defense whatever on the grounds of his military occupation or sailing and in consideration of the receipt of the automobile here described, he waives all defenses of every kind and nature whatever of such laws as are now in force or may be hereinafter enacted relating thereto.

14. It is agreed that this instrument contains the entire agreement between the contracting parties and that no statements, promises or inducements made by any party hereto, or employee, agent or salesman of either party hereto, which is not contained in this written contract shall be binding or valid; and this contract may not be enlarged, modified, or altered except by endorsement hereon, executed by the party of the first part and the party of the second part

15. It is agreed that the party of the second part will exhibit said automobile and allow inspection thereof at any time upon demand of the party of the first part

16. This agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

17. This contract is executed in duplicate, of which the original is delivered to the party of the first part, and the duplicate is delivered to the party of the second part.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this **fourteenth** day of **April** **1922**, at **SAN FRANCISCO, CALIFORNIA.**

Witness

By

H.O.Harrison Co

A.L.King

Witness

Secretary

R. J. Jansen

Gino orno Modesti

Address of party of the second part

Please Fill Out this Blank Carefully

Name and Post Office address of second party signing this Lease Contract } Name **G. Modesti**
Town **S.F.** State **S.F.**
Street **567 London Street** No

Business or occupation of second party **Ranch Man**

To whom does second party refer as to his financial and general standing. Give two names or more } **Mrs. Shack Groo.** Address **London St. S.F.**
Address

For what purpose is automobile to be used **Business and Pleasure**

Where is automobile usually stored **Private Garage**

Have bank account with

Are you over 21 years of age **Yes** Are you married?

How many children? Name and address of relatives in San Francisco

For Value Received

I hereby assign all my right, title and interest in and to the within contract and in and to the property therein described and all of the moneys payable thereunder to and hereby guarantee the payment of all moneys due or to become due under the said contract and also the full performance by the second party therein named of all the second party's promises and covenants, and I hereby consent that the time of payment of any of the said installments therein provided may be extended at the request of the second party.

Dated, the day of 1922

Conditional

Contract of Sale

TO

Jack Modesti

567 London St. S.F.

Date April 14th 1922

Per Value Received

I hereby assign all my right, title and interest in and to the within contract and in and to the property therein described and all of the moneys payable thereunder to
and hereby guarantee the payment of all moneys due or to become due under the said contract and also the full performance by the second party therein named of all the second party's promises and covenants, and I hereby consent that the time of payment of any of the said installments therein provided may be extended at the request of the second party.

Dated, the day of 19.....

Conditional Contract of Sale

TO

Jack Modesti

567 London St. S.F.

Date April 14th 1922

And further evidence supporting all the allegations of the application of H. O. Harrison Co. for the allowance of a lien in its favor against the proceeds of the sale of said Essex automobile, having been introduced, and no answer to said application having been filed and no evidence to the contrary having been offered or introduced by the plaintiff, United States of America, the application on behalf of H. O. Harrison Co. was ordered submitted by the Court for decision.

That thereafter and on the 14th day of April, 1923, the said application was denied by the Court and an order entered accordingly, to which ruling said applicant duly excepted.

REDMAN & ALEXANDER,
Attorneys for Applicant.

It is hereby stipulated and agreed that the foregoing bill of exceptions is correctly engrossed and may be allowed.

Dated Jun. 5, 1923.

JOHN T. WILLIAMS,
U. S. District Attorney.
F. J. SCHMID. [30]

United States of America,
Northern District of California,—ss.

I, John S. Partridge, Judge of the United States District Court for the Northern District of California, do hereby certify that the foregoing is a full, true and correct bill of exceptions in the above action and that the recitals therein regarding the evidence are true and correct and the same is

now allowed, approved and signed, and ordered filed and made a part of the records in this cause.

Dated: this 16th day of June, 1923.

JOHN S. PARTRIDGE,

Judge.

Received the within bill of exceptions this 14th day of May, 1923, without waiving any objections as to time or otherwise.

JOHN T. WILLIAMS,

U. S. District Attorney.

[Endorsed]: Filed Jun. 13, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[31]

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 31 pages, numbered from 1 to 31, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of The United States of America, vs. Jack Modesti, No. 12957, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein) and the instructions of the attorney for the appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error

is the sum of Thirteen Dollars and Seventy-five Cents (\$13.75) and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original writ of error (page 33), return to writ of error (page 34) and original citation on writ of error (page 35).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27th day of July, A. D., 1923.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [32]

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America,
to the Honorable, the Judges of the District
Court of the United States for the Northern
District of California, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between H. O. Harrison Co., a corporation, applicant and plaintiff in error, and The United States of America, plaintiff and defendant in error, a manifest error hath happened, to the great damage of the said H. O. Harrison Co., applicant and plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 18th day of May, in the year of our Lord one thousand nine hundred and twenty-three.

[Seal]

W. B. MALING,

Clerk of the United States District Court, for the Northern District of California.

By C. M. Taylor,
Deputy Clerk.

Allowed by:

JOHN S. PARTRIDGE,
U. S. District Judge. [33]

Due service of the within writ of error and receipt of a copy of same is acknowledged this 23d day of May, 1923.

J. T. WILLIAMS, U. S. Attorney,
Attorney for Defendant in Error.

[Endorsed]: No. 12957. United States District Court for the Northern District of California. H. O. Harrison Co., a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Writ of Error. Filed May 22, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Return to Writ of Error.

The answer of the Judges of the District Court of the United States, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was, on the 22d day of May, A. D., 1923, duly lodged in the case in this Court for the within named defendant in error.

By the Court.

[Seal]. WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

By C. M. Taylor,
Deputy Clerk. [34]

Citation on Writ of Error.

United States of America,—ss.

The President of the United States, to The United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein H. O. Harrison Co., a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PART-
RIDGE, United States District Judge for the
Northern District of California, this 18th day of
May, A. D. 1923.

JOHN S. PARTRIDGE,
United States District Judge. [35]

Due service of the within citation on writ of error and receipt of a copy of same is acknowledged this 23d day of May, 1923.

J. T. WILLIAMS, U. S. Attorney,
Attorney for Defendant in Error.

[Endorsed]: No. 12957. United States District Court for the Northern District of California. H. O. Harrison Co., a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Citation on Writ of Error. Filed May 22, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 4065. United States Circuit Court of Appeals for the Ninth Circuit. H. O. Harrison Company, a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed July 28, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

